

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THOMAS MCGOVERN,

Plaintiff,

vs.

WARDEN TOM GREEN,

Defendant.

Cause No. CV 10-00157-BLG-RFC-CSO

FINDINGS AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE TO
GRANT DEFENDANT'S MOTION TO DISMISS

Pending is Defendant Warden Tom Green's Motion to Dismiss for Failure to Exhaust Administrative Remedies. (*Court Doc. 18*). The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) provides that, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Defendant has provided sufficient information to indicate that McGovern failed to exhaust his administrative remedies with regard to

his request for injunctive relief that the prison's policy prohibiting the casting of spells and curses be changed. McGovern admits he failed to exhaust his administrative remedies with regard to this issue and does not object to the motion to dismiss. (*Court Doc. 24*).

Accordingly, the Court issues the following:

RECOMMENDATION

Defendant Green's Motion to Dismiss for Failure to Exhaust Administrative Remedies (*Court Doc. 18*) should be granted and this matter dismissed without prejudice.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), McGovern may serve and file written objections to these Findings and Recommendations within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. As this deadline allows a party to act after the Findings and Recommendations is served, it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

Any such filing should be captioned "Objections to Magistrate Judge's Findings and Recommendations."

A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge and may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 22nd day of November, 2011.

/s/ Carolyn S. Ostby
Carolyn S. Ostby
United States Magistrate Judge